82-1238

NO. _____

In The
SUPREME COURT
of the
UNITED STATES

OCTOBER TERM, 1982

MURRAY MEYERSON, et al., MAYOR AND CITY COMMISSIONERS OF THE CITY OF MIAMI BEACH,

Petitioners,

vs.

ESPANOLA WAY CORP., a Florida Corporation,

Respondent.

BRIEF FOR AMICUS CURIAE THE STATE OF FLORIDA

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INTEREST OF AMICUS CURIAE

The Attorney General of the State of Florida, pursuant to Rule 36.4, Rules of the Supreme Court of the United States, respectfully submits this brief on behalf of the State of Florida as Amicus Curiae, urging that this Petition for Writ of Certiorari be granted.

The interest of the State of Florida arises from the issue of qualified immunity for public servants. Although Petitioners have addressed this issue to some extent, their arguments have been primarily oriented, at least until this point, toward the absolute legislative immunity defense. Amicus desires to bring to the attention of this Court the apparent conflict between this decision of the Court of Appeals for the Eleventh Circuit and the holding of this Court in Harlow and Butterfield v. Fitzgerald, 457 U.S. ____; 102 S.Ct. 2727; 73 L.Ed.2d 396 (1982).

Annually the State of Florida, like every other state, expends public funds in substantial amounts for the legal defense of state officials and employees. The great majority of these state defendants have acted in good faith while trying to fulfill the responsibilities of their offices and employment. The majority of the lawsuits are insubstantial, should not proceed to trial, and could, in the interests of all justice, be summarily disposed of. It is toward the goal of early disposition of such suits, Amicus believes, that this Court's Harlow decision was directed. It is for this reason that the State of Florida supports the Mayor and the City Commissioners of the City of Miami Beach in urging that this Petition for Writ of Certiorari be granted.

SUMMARY OF ARGUMENT

The Court of Appeals for the Eleventh Circuit, in its reversal of the order of the district court, has either misconstrued or misapplied the holding of this Court in Harlow v. Fitzgerald, 457 U.S. ___, 102 S.Ct. 2727, 73 L.Ed.2d 396. The district court had entered summary judgment for defendant public officials. The stated grounds for the Circuit Court's subsequent reversal were, inter alia: that very little in the way of a factual record had been developed; that the defendants' actions arguably involved malice; and that some question exists as to whether summary judgment may be an appropriate means of resolving a state of mind issue, at least in the absence of a hearing. Harlow v. Fitzgerald was cited as the authority for this last proposition.

It is submitted that the decision of this Court in Harlow stood for the diametrically opposite proposition that the state of mind of a defendant public official should not be the subject of inquiry, and that summary judgment is an appropriate means of resolving the issue of qualified immunity in such a case. In spite of the lucid language of Harlow, the holding of the Court of Appeals may well create confusion at the district court level as to how Harlow should be construed. The petition for certiorari should be granted.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

It is respectfully submitted that the reversal of the trial court in this case by the Court of Appeals for the Eleventh Circuit, or at least certain language in that opinion, is in such apparent conflict with the holding of this Court in Harlow v. Fitzgerald as to create the potential for considerable uncertainty among federal courts throughout the circuit in regard to the proper disposition of a motion for summary judgment when a defendant public official is asserting the defense of immunity.

Bearing in mind the admonition of the Rules of this Court to be concise, Amicus will neither belabor the Court unnecessarily with reiterations of its own opinions nor presume to inform the Court as to the evolution of the doctrine of qualified immunity. It should be

sufficient for the purposes of framing this discussion to state that prior to the decision of this Court in Harlow, supra, the establishment of the defense of qualified immunity involved a determination of both an objective and a subjective element. Determination of the objective element required an examination of the state of the law relating to constitutional rights in regard to the defendant's actions, and whether the defendant was or should have been cognizant of the law. Determination of the subjective element required an examination of the defendant's state of mind at the time of his actions in order to ascertain whether his intentions were permissible rather than malicious. Procunier v. Navarette, 434 U.S. 555, 98 S.Ct. 855, 55 L.Ed.2d 24 (1978); Wood v. Strickland, 420 U.S. 308, 43 L.Ed.2d 214, 95 S.Ct. 992 (1975).

It appeared obvious that this Court, in Harlow, decided that in the determination of whether qualified immunity exists, an examination of the state of mind of a defendant public official is not an essential task when there is no evidence of bad faith from the acts of the defendant as alleged; that a search for malice is costly and unnecessary when the facts offer no appearance of malicious intention at the outset. The Court stated that such inquiries ". . .proved incompatible with our admonition in Butz that insubstantial claims should not proceed to trial," and hence ". . .bare allegations of malice should not suffice to subject government officials either to the cost of trial or to the burdens of far-reaching discovery." 457 U.S. ___, 73 L.Ed.2d 396,410, 102 S.Ct. 2727, 2738-39.

These conclusions reached, the consequential holding seemed straightforward: that the only determination to be made is whether the actions of the official, measured objectively, violated some clearly established law of which the official knew or should have known. This is a determination which is appropriate for the trial judge to make on a motion for summary judgment.

In the present case, the Petitioners (defendants below) are the mayor and city commissioners of the City of Miami Beach. It came to their attention that the maintenance and operation of certain hotels were below the standards set by city fire and building codes. These hotels were the source of a number of police calls greatly disproportionate to the size or occupancy of the establishments. Some members of the

Miami Beach community felt that areas surrounding these hotels were deteriorating because of the manner in which the hotels were maintained and operated. In a public meeting, these hotels were referred to by name and by number of police calls generated. The City Manager was directed (by whom, it is not clear from any document in the record, including the plaintiff's complaint) to begin a strict enforcement of the city codes in regard to these hotels. Plaintiff owned one of the hotels. Plaintiff brought suit under 42 U.S.C. §1983.

The complaint made no allegation as to which federal law or constitutional right had been abrogated, instead merely repeating the language of §1983. The damage claims were vague, as were the various allegations throughout the complaint that the actions of the

commissioners had been taken solely for harassment.

The defendants moved to dismiss and for summary judgment. They submitted transcripts of commission discussions and affidavits stating that they had acted in the proper discharge of their duties, in the best interests of the city, and "with no malicious intention to deprive any individual of any federal or state constitutional or statutory right." The affidavits further denied each allegation of the complaint that had been stated with any specificity.

The plaintiff responded to the motion for summary judgment with an affidavit stating that she had read the complaint and believed its allegations to be true.

The trial court entered summary judgment for the defendants. It found that: the complaint failed to state a

federal claim as it did not describe any violation of federal law or deprivation of any constitutional right; if it were assumed such a violation had been alleged, the defendants were absolutely immune from suit as legislators; even if the immunity were only qualified, the record on motion for summary judgment established a good faith defense as a matter of law; and the plaintiff's response to defendants' motion for summary judgment had failed to set forth any specific facts to refute the defendants' affidavits and evidence of immunity.

Thus the trial judge was presented with an insubstantial lawsuit, one in which the plaintiff's case consisted of nothing more than bare allegations of malice. The conduct of the public officials was reasonable by any objective standard and certainly did not violate any currently

applicable law, clearly established or otherwise. It is difficult to conceive of a case more cleanly tailored to fit the kind of action addressed in Harlow. The trial court, acting even before receiving the benefit of that decision, rightly granted the defendants' motion for summary judgment in accordance with good law, common sense, and the principles that this Court would articulate one year later.

The Court of Appeals for the Eleventh Circuit, presumably acting with the benefit of the Harlow decision, reversed on all grounds. Espanola Way Corp. v. Meyerson, 690 F.2d 827 (11th. Cir. 1982). The Eleventh Circuit found that although the complaint failed to make specific mention of a federal or constitutional right, it contained allegations sufficient to state a §1983 claim based on the taking of property without due process. The opinion further

found that the defendants had pleaded only absolute immunity in their motions, and "merely stated in their reply memorandum" that they had acted in good faith; that very little in the way of a factual record had been developed at the time of the district court's dismissal; that the conduct of the defendants arguably involved malice; and that a conscious attempt to deprive property owners of property without due process of law clearly contravenes established law.

The aspects of the Eleventh Circuit opinion which are most deserving of the attention of this Court are two citations to Harlow v. Fitzgerald and the statements which these citations accompany. The first citation occurred in a footnote which quoted two complete paragraphs of the Harlow opinion in conjunction with this statement:

"Further, the defense of qualified immunity is unavailable to officials who, though otherwise covered, act with malice[1] or contrary to established law."

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[1] Accord, Harlow v. Fitzgerald, U.S. ___, ___, 102 S.Ct. 2727, 2737-2738, 73 L.Ed.2d 396 (1982).

Qualified or "good faith" immunity is an affirmative defense that must be pleaded by a defendant official. Gomez v. Toledo, 446 U.S. 635 [100 S.Ct. 1920, 64 L.Ed.2d 572] (1980). Decisions of this Court have established that the "good faith" defense has both an "objective" and a "subjective" aspect. The objective element involves a presumptive knowledge of and respect for "basic, unquestioned constitutional rights." Wood v. Strickland, 420 U.S. 308, 320 [95 S.Ct. 992, 1000, 43 L.Ed.2d 214] (1975). The subjective component refers to "permissible intentions." Ibid. Characteristically the Court has defined these elements by identifying the circumstances in which qualified immunity would not be available. Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with malicious intention to cause a deprivation of constitutional rights or other injury . . . ." Id. at 321-322 [95 S.Ct. at 1000-1001] (emphasis added).

The subjective element of the good faith defense frequently has proved incompatible with our admonition in Butz that insubstantial claims should not proceed to trial. Rule 56 of the Federal Rules of Civil Procedure provides that disputed questions of fact ordinarily may not be decided on motions for summary judgment. And an official's subjective good faith has been considered to be a question of fact that some courts have regarded as inherently requiring resolution by a jury.
Espanola Way Corp., supra, at 830, quoting Harlow v. Fitzgerald.

Although the footnoted sentence is a clear statement of the previously applicable law as enunciated in Wood v. Strickland, supra, the citation to Harlow is inappropriate, especially as the quoted paragraphs were simply this Court's summation of the recent history of the application of the qualified immunity doctrine prefatory to its holding in Harlow.

The second citation to Harlow follows the last sentence of the text of the

opinion. It is cited as authority for the proposition that: "Finally, there is some question as to whether summary judgment may be an appropriate means of resolving a state of mind issue, at least in the absence of a hearing." Espanola Way Corp., supra, at 830-831.

Amicus submits the Court of Appeals misconceived the thrust of this Court's opinion in Harlow, i.e., that a trial judge may, by examining a public official's conduct in relation to clearly established law, determine on summary judgment whether the defense of qualified immunity shields the official from suit, without the necessity of further litigation to inquire into the official's state of mind.

It might also be noted that after the trial court found evidence of good faith from the record, the Court of Appeals found that the defendants did not plead qualified

immunity in their initial motions, but "merely stated in their reply memorandum that even if only qualified immunity existed, the Commissioners acted in good faith". Espanola Way, supra at 830. As the proceeding had not reached the stage at which an answer was required pursuant to Rule 12(a), Fed.R.Civ.P., the defendants could not be said to have waived that defense, and the trial judge very properly found good faith to have been established from the record. It hardly seems consonant with the philosophy of modern pleading to strip the defendants of their immunity because their initial motions did not utilize the phrase "good faith". This is especially so when the defendants' affidavits squarely addressed their actions in terms of fulfilling the obligations of their office, acting in the best interests of the city, and intending no violation of any law or of the rights of any individual.

This Court has admonished and reiterated that insubstantial lawsuits should not proceed to trial. Harlow, supra, 457 U.S. ___, 102 S.Ct. 2727, 93 L.Ed.2d 396, 408, 410; Butz v. Economou, 438 U.S. 478, 507; 98 S.Ct. 2894, 57 L.Ed.2d 478. The Court has repeatedly cautioned of the need for public officials to: ". . .be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties. . ." Barr v. Matteo, 360 U.S. 564, 571, 3 L.Ed.2d 1434, 79 S.Ct. 1335 (1959); Pierson v. Ray, 386 U.S. 547, 18 L.Ed.2d 288, 87 S.Ct. 1213 (1967).

It should seem unnecessary to mention the plethora of lawsuits plaguing state and local governments under the guise of §1983 civil rights actions. It is undisputed that this statute has, for more than a century, provided a vehicle by which

redress might be gained by citizens who suffered, through deliberate and calculated acts of government officials, the deprivation of Constitutional rights. In recent years, however, §1983 has become a vehicle of a different sort. It has become a means by which incarcerated individuals may at once find relief from boredom and harass their custodians. It has become a method by which some citizens, who feel offended by the actions of government officials, may strike out at them and thereby hope to irritate, embarrass, or intimidate the officials.

The case below is an insubstantial lawsuit within the meaning of this Court's use of that term in Harlow. The conduct of the defendant officials was reasonable. It was not in violation of any established law. Their intentions or state of mind should not have been at issue. The trial

judge properly entered summary judgment. The reversal by the Court of Appeals misapplied the principles enunciated in Harlow v. Fitzgerald. The decision of that Court of Appeals should be reviewed.

CONCLUSION

The decision of the Court of Appeals for the Eleventh Circuit in this case is in such conflict with the decision of this Court in the case of Harlow and Butterfield v. Fitzgerald as to require review of this case. The Writ of Certiorari should be granted.

Respectfully submitted,

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